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COMMITTEE ON APPLICATIONS FOR REVIEW OF
ADMINISTRATIVE TRIBUNAL JUDGEMENTS
Thirty-sixth session

Report of the Chairman on the work of the first meeting of the extended thirty-sixth session of the Committee

INTRODUCTION

1. At its regular thirty-sixth session, held on 11 and 12 February 1991, the Committee decided to convene a special meeting or meetings at the end of April or the beginning of May 1991 to consider how the current procedures of the Committee could be improved. Pursuant to that decision, the first meeting of the extended thirty-sixth session of the Committee was held on 20 May 1991.

2. At the beginning of the meeting the Chairman informed the Committee that a number of delegations of Member States that were not currently represented on the Committee, but which had actively participated in it in previous years, were interested in taking part in the work of the Committee at the session. Bearing in mind the valuable experience accumulated by the aforementioned delegations, the Committee concluded that its deliberations could only benefit from their participation. Therefore, at the suggestion of the Chairman, the Committee decided that its current meeting or meetings of the extended session devoted to the particular purpose of seeking improvements in the procedures of the Committee should be open to the delegates of the interested Member States who might wish to participate as observers.

3. The members of the Committee subsequently proceeded with the examination of those provisions of the rules of procedure of the Committee which appeared to be impediments in its work and, therefore, required modification. The following areas were identified in this respect: time-limit for submission of applications to the Committee; criteria to be applied for taking a decision on the receivability of the application; observations of the applicant on the comments of the Respondent; verbatim records of the public meetings; and officers of the Committee.

4. Having completed a detailed examination of the above-mentioned issues, the Committee asked the Chairman to submit concrete draft proposals for the revision of the rules of procedure of the Committee to the next meeting of the extended session, taking into account the opinions expressed during the deliberations.

5. The following proposals are submitted by the Chairman in response to the request by the Committee.

I. TIME-LIMIT FOR SUBMISSION OF APPLICATIONS TO THE COMMITTEE

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6. The time-limit for submission of applications to the Committee is currently calculated in accordance with the provisions of article 11, paragraph 1, of the statute of the United Nations Administrative Tribunal and article II, paragraph 1, second sentence, of the rules of procedure of the Committee. Under these provisions, the application should be submitted to the Committee within 30 days from the date of the judgement. The date of the judgement is considered to be the date on which the judgement has been received by the parties to the proceedings, which date shall be presumed to be two weeks after the dispatch of the copies by the Executive Secretary of the Tribunal. In other words, these provisions provide for a formula of 30 days plus 14 days; in total, 44 days. The footnote to paragraph 1 of article II of the Committee's rules of procedure envisages that the two-week period should have the status of a presumption only and that it is open to either party to the proceedings to show that the actual date of receipt of the judgement was later than two weeks. Despite the above-mentioned footnote, in practice, the Committee has been reluctant to demonstrate any sort of flexibility and has preferred to follow strictly the 44-day formula.

7. In the Fischman case, the Committee questioned the authority of the Secretary of the Committee to decide whether the extension of the two-week period was justified (A/AC.86/30). It appears from the records of the Committee that members of the Committee were of the opinion that such a decision should be taken by the Committee itself. At the twenty-seventh session the Committee concluded that in order to decide whether an application was submitted within the time-limit or not, it should have the application posted as a document in front of it (A/AC.86/27). This conclusion means that after an application is processed as a document and the comments of the Respondent have been obtained, the Committee could then decide that the application should not be examined at all because it was not submitted within the required time-limit.

8. In the light of the above, it appears that the provisions of the rules of procedure of the Committee on submission of applications are confusing in so far as the time requirements are concerned. It should also be noted that many applicants have complained that the provisions are not satisfactory because they do not provide the Applicant with enough time to prepare a well-grounded application.

9. Therefore, it is suggested that, in addition to the time-limit of two weeks referred to in article II, paragraph 1, of the rules of procedure of the Committee, the Applicant should be given an additional two weeks to cover the period during which the application is mailed to the Secretary of the Committee. Thus, the date of the dispatch of the application by the Applicant to the Secretary of the Committee should be presumed to be two weeks before its receipt by the Secretary from the Applicant. This change, if approved, would extend the time-limit during which the application should be received by the Secretary of the Committee by another two weeks and would provide the Applicant with sufficient time for the preparation of an application. This proposal is reflected in paragraph 15 of the present report as alternative A of a revised text of paragraph 1 of rule II.

10. At the same time it should be noted that there is a technical problem in adding a rule that the date of the receipt by the Secretary of an application shall be presumed to be two weeks after its dispatch by the Applicant. Although such a formula can work in the case of judgements (because the Executive Secretary of the Tribunal will have a reliable record of the date of dispatch), it may not be at all easy for an Applicant to satisfy the Chairman of the Committee as to the date he dispatched his application. A way out of this might be to double the period by which copies of the judgement are presumed to have been received by the parties, to 30 days after dispatch of the judgement. Since the Applicant then has, under article 11 (1) of the statute, 30 days in which to lodge his application, he will have 60 days to work on it, less only those days which it takes for the judgement to arrive and for his application to reach the Secretary of the Committee. This should, in practice, give him about 30 days in which to prepare the application. This approach is reflected in paragraph 15 of the report as alternative B.

11. It is also proposed, in the light of the discussion, that the footnote to article II in the rule of procedure should be deleted. Its text will be incorporated in article II and supplemented by a phrase stating that the Chairman of the Committee will decide as to whether or not the application should be considered timely and therefore receivable.

B

12. Paragraph 2 of article 11 of the statute of the United Nations Administrative Tribunal envisages that the Committee should decide within 30 days whether or not the application has a substantial basis for the request of an advisory opinion of the International Court of Justice. Article VI of the rules of procedure of the Committee further states that the Committee shall be convened no later than 25 days from the date of the receipt of the application by the Committee, which is the date when copies of the application are dispatched to the members of the Committee by its Secretary.

13. The above provisions place serious constraints on the work of the Committee. Copies of an application and the relevant judgement sometimes reach missions within a time period from one to two weeks, depending on the workload of the United Nations Correspondence Unit. The other party to the

proceedings (the Respondent) does not have enough time to prepare comments on the application under article IV of the rules of procedure of the Committee. Even if such comments are presented expeditiously, it takes some time to translate and process them as a document of the Committee. Therefore, these comments reach the Committee members only two or three days before the start of the session at which the application is to be considered.

14. In order to avoid time congestions and to facilitate the work of the Committee, it is therefore proposed that for the purposes of article 11, paragraph 2, of the statute the date of the receipt of an application by the Committee should be the date two weeks after the copies of the application are dispatched to the members of the Committee by its Secretary.

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15. Two alternatives of a revised text of paragraph 1 of rule II with the changes indicated above would read as follows:

Alternative A

"1. (a) Applications asking the Committee in accordance with article 11 of the statute of the United Nations Administrative Tribunal to request an advisory opinion of the International Court of Justice shall be submitted in writing to the official designated by the Secretary-General to serve as Secretary of the Committee.

(b) For the purposes of paragraph 1 of article 11 of the statute of the Administrative Tribunal, the date of the judgement shall be considered to be the date by which it was received by both the parties to the proceedings before the Tribunal. That date shall be presumed to be two weeks after the dispatch of copies of the judgement by the Executive Secretary of the Tribunal, unless either party can show to the satisfaction of the Chairman of the Committee that the actual date of receipt was later.

(c) The date of dispatch of an application by the Applicant to the Secretary of the Committee should be presumed to be the date two weeks before its receipt by the Secretary from the Applicant.

(d) For the purposes of paragraph 2 of article 11 of the statute, the date of the receipt of an application by the Committee shall be the date two weeks after the copies of the application are dispatched to the members of the Committee by the Secretary of the Committee."

Alternative B

"1. (a) Applications asking the Committee in accordance with article 11 of the statute of the United Nations Administrative Tribunal to request an advisory opinion of the International Court of Justice shall be submitted in writing to the official designated by the Secretary-General to serve as Secretary of the Committee.

(b) For the purposes of article 11, paragraph 1, of the statute of the Administrative Tribunal, the date of the judgement shall be considered to be the date by which it was received by both the parties to the proceedings before the Tribunal. That date shall be presumed to be 30 days after the dispatch of copies of the judgement by the Executive Secretary of the Tribunal, unless either party can show to the satisfaction of the Chairman of the Committee that the actual date of receipt was later.

(c) For the purposes of paragraph 2 of article 11 of the statute, the date of receipt by the Committee of an application shall be the date two weeks after the copies of the application are dispatched to the members of the Committee by the Secretary of the Committee."

II. CRITERIA TO BE APPLIED FOR TAKING A DECISION ON THE RECEIVABILITY OF THE APPLICATION

16. Article III, paragraph 2, of the rules of procedure of the Committee states that if an application manifestly does not comply with the requirements established for the submission of the applications to the Committee, the Secretary of the Committee, with the approval of the Chairman, or in his absence, the Rapporteur, shall return the application to the Applicant for correction if the non-compliance of the application appears susceptible to correction. If an application does not appear to be susceptible to correction then, according to the paragraph, "it shall be considered irreceivable and the Secretary shall so inform the applicant".

17. The above provision in the rules of procedure raises a number of questions.

18. First of all, it is not clear whether the Secretary of the Committee is the person who decides on the receivability of the application, in particular in the last instance.

19. Secondly, what should be considered as a criterion for taking a decision on the receivability of the application? For example, in one of the cases before the Committee the Applicant had originally submitted an application consisting of only three sentences. The Applicant himself confessed that he had done so intentionally in order to gain additional time to prepare an application.

20. Thirdly, should an application which exceeds the time-limit fall within the provisions of article II, paragraph 2, of the rules of procedure of the Committee, and could it be considered irreceivable?

21. Following the discussion that took place on the above questions, it is proposed to redraft article III, paragraph 2, of the rules of procedure by making it clear that the decision as to whether or not the application is susceptible to correction should be taken by the Chairman of the Committee.

22. With regard to the question of a criterion that should be applied for taking a decision on the receivability of the application, it appears from the discussion that the reference to the term "manifestly" in the text was considered by many members of the Committee as sufficient guidance. As a result, no changes are suggested in this respect.

23. It was felt by most participants that corrected applications should be resubmitted within a one-week period by all Applicants who live in the United States, and not only those who are located in New York. Therefore, it is suggested to substitute "New York" with "The United States" in the text of article III, paragraph 2, of the rules.

24. Since the question of an officer or officers of the Committee performing functions of the Chairman in the absence of the latter is dealt with in article XII of the rules of procedure of the Committee, it is proposed to delete the reference to the Rapporteur in article III, paragraph 2.

25. With reference to the issue of the receivability of applications in general, it is suggested to delete the footnote to paragraph 2 of article III concerning the submission of information to the Committee by the Secretary on any application that has been termed irreceivable and to include its provisions in the text of the rules of procedure itself as a new article (art. III bis). Such information should include the cases where an application was not accepted because it was not submitted in a timely manner, as well as those where an application was considered irreceivable on the ground of not complying manifestly with the requirements set forth in article II, paragraph 2, of the rules.

26. A revised text of paragraph 2 of article III should read as follows:

> "Notwithstanding paragraph 1, if an application manifestly does not comply with the requirements of article II, paragraph 2, of these rules, the Chairman of the Committee shall decide whether the application is susceptible to correction. If the Chairman decides that it is susceptible to correction, the application will be returned by the Secretary of the Committee to the Applicant with a request that it be corrected and resubmitted within one week of the date on which the Secretary dispatched the application if the Applicant is located in the United States, or otherwise within three weeks. If the application is not resubmitted in correct form within the indicated time-limit or the

Chairman decides that it is not susceptible to correction, it shall be considered to be irreceivable and the Secretary shall so inform the Applicant."

27. The text of the new article III bis should read as follows:

"At the beginning of each session the Secretary of the Committee shall inform the Committee of any application submitted since its last session that the Chairman decided was irreceivable pursuant to paragraph 1 of article II and paragraph 2 of article III of these rules."

III. OBSERVATIONS OF THE APPLICANT ON THE COMMENTS OF THE RESPONDENT

28. Paragraph 1 of article IV of the rules of procedure of the Committee states that the other party to the proceedings (the Respondent) before the Administrative Tribunal, or each of the parties in those cases where the application is made by a Member State, may, within one week from the date on which a copy of the application was communicated in accordance with paragraph 1 of article III above if the party is located in the United States or otherwise within three weeks, submit in writing to the Secretary its comments with respect to the application.

29. Neither the statute of the Administrative Tribunal nor the rules of procedure of the Committee provide for an Applicant to submit observations on the comments of the Respondent. Therefore, observations that have sometimes been submitted by the Applicants were not translated into other official languages and were not circulated to the members of the Committee in the form of a document. Besides, there was usually no time for such an arrangement. Copies of such observations were made available to the members of the Committee in the conference room in their original language at the time of the consideration of the application.

30. It should be noted at the same time that article VII, paragraph 2, of the rules of procedure of the Committee makes reference to the "observations" that the parties to the proceedings before the Administrative Tribunal wish to submit to the Committee. The use of the term "observations" in that article has been a matter of confusion because it has inspired some of the Applicants to submit their observations on the comments of the Respondents.

31. In considering this issue the participants in the debate expressed the view that the existing confusion should be avoided. It is my understanding that the members of the Committee had a unanimous view that the only documents which should be before the Committee for the purposes of the examination of an application are the application itself, the judgement of the Administrative Tribunal in the particular case and the comments of the other party to the proceedings before the Administrative Tribunal (the Respondent).

32. It was pointed out during the discussion that the current text of article VII, paragraph 2, which envisages the possibility of oral hearings in cases where an application has been submitted by a member of the Committee, could give the impression that the Committee is a type of appeal body, but in fact it is not. Therefore, it was felt that the second sentence of the paragraph should be deleted.

33. In the light of the considerations referred to above, it is proposed to substitute the current text of article VII, paragraph 2, by the following:

> "2. For the purposes of the examination of an application, the Committee shall have before it in document form only the application, the judgement of the Administrative Tribunal to which it relates and the comments of the other party to the proceedings before the Administrative Tribunal, if the latter wishes to submit such comments in accordance with paragraph 1 of article IV of the present rules. The application and the comments shall be submitted in writing only."

IV. VERBATIM RECORDS OF THE PUBLIC MEETINGS

34. In accordance with article XI, paragraph 2, of the rules of procedure of the Committee, a verbatim record of a public meeting of the Committee should be prepared only when the Committee requests an advisory opinion of the International Court of Justice. The current practice of the Committee is at variance with this. A verbatim record is prepared for all public meetings of the Committee at which the decisions of the Committee on Applications are being announced, and the members of the Committee have an opportunity to make statements for the record.

35. It appears from the discussion that the members of the Committee hold the view that the text of the aforementioned paragraph should be changed to reflect the current practice of the Committee.

36. The revised text of paragraph 2 of article XI should read as follows:

> "2. A verbatim record, in English and French, of the proceedings of the Committee shall be prepared for the public meetings of the Committee referred to in paragraph 4 of article VII. If the Committee requests an advisory opinion of the International Court of Justice in respect of an application, the Secretary shall transmit to the Court the verbatim record of the public meeting at which the decision of the Committee to make such a request was formally announced together with other relevant documents."

V. OFFICERS OF THE COMMITTEE

37. Under article XII of the rules of procedure of the Committee, the Chairman of the Committee and its Rapporteur should be elected at the first session of the Committee after the opening of each regular session of the General Assembly. Under the same article, the Rapporteur shall perform the functions of the Chairman in the absence of the latter.

38. The practice of the Committee has developed in a slightly different direction. If a Chairman of the Committee is not available at the session of the Committee which follows the first session, the Committee usually elects a new Chairman, who, in accordance with the established tradition, is a representative from the same country. Therefore, at the time of the discussion a proposal was made to reflect this practice in the rules of procedure.

39. The opinions of the members of the Committee were divided on this issue. Some of the representatives preferred to keep the present text of article XII without changes, while others favoured the introduction of an office of Vice-Chairman. It was decided that the discussion would be continued at the next meeting. Therefore, no proposal is submitted with regard to the changes that could be introduced to article XII of the rules of procedure of the Committee.